

August 10, 2012

VIA ELECTRONIC DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room TWA325
Washington, DC 20554

**Re: Notice of *Ex Parte* Presentations
CG Docket No. 02-278**

Dear Ms. Dortch:

On Wednesday, August 8, 2012, Michele C. Farquhar and Mark W. Brennan of Hogan Lovells US LLP, counsel to Encore Capital Group, Inc. (“Encore”), met with Nicholas Degani, Legal Advisor to Commissioner Pai, regarding the Telephone Consumer Protection Act (“TCPA”) and issues related to the use of predictive dialers. Ms. Farquhar and Mr. Brennan also met with Angela Kronenberg, Legal Advisor to Commissioner Clyburn, on Thursday, August 9 to discuss these issues.

During the meetings, the Encore representatives expressed support for Commission efforts to examine whether predictive dialers used for non-telemarketing purposes should be considered “automatic telephone dialing systems” (or “autodialers”) under the TCPA. Specifically, they encouraged the Commission to seek comment expeditiously on the Petition for Declaratory Ruling filed by Communication Innovators (“CI”),¹ in particular before the deadline for parties to file comments on the separate TCPA petition filed by GroupMe, Inc. (“GroupMe”).² Encore supports the CI petition, which includes strong arguments supporting a clarification to facilitate live informational calls to wireless telephone numbers, consistent with the Commission’s *Robocall Report and Order*³ and the TCPA.

¹ See *Petition for Expedited Declaratory Ruling*, Communication Innovators, CG Docket No. 02-278 (filed June 7, 2012).

² See *Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Expedited Declaratory Ruling from GroupMe, Inc.*, DA 12-1180, Public Notice, CG Docket No. 02-278 (July 24, 2012).

³ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 27 FCC Rcd 1830 (2012) (“*Robocall Report and Order*”).

The Encore representatives discussed Encore's use of predictive dialing technology and noted that such technology provides significant benefits to consumers, such as:

- Protecting them from improper calls and manual dialing errors (e.g., by restricting calls to specific telephone numbers, specific accountholders, certain hours of the day or days of the week, and a limited number of attempts per telephone number or individual);
- Promoting compliance with other statutes and regulations;
- Providing timely, useful information to accountholders; and
- Creating efficiency cost-savings that can be passed on to consumers.

They also discussed technical issues related to predictive dialers, including whether such equipment sold today includes the "capacity" to produce, store, and dial random or sequential numbers, as required to be an autodialer under the TCPA. The Encore representatives noted that seeking public comment on the CI petition would encourage parties to provide input on which predictive dialers or similar technologies have such "capacity." More information about predictive dialers is included in the attached *Five Facts About Predictive Dialers* handout that was distributed at the meetings.

Finally, the Encore representatives highlighted the fact that industry confusion and regulatory uncertainty are causing TCPA class actions to skyrocket. This litigation environment is affecting Encore and hundreds of other companies. Therefore, it is important that the Commission have an opportunity to address the ongoing predictive dialer confusion before court decisions create a conflicting patchwork of law regarding the scope of the TCPA's autodialer restriction.

Pursuant to Section 1.1206(b) of the Commission's rules, I am filing this notice electronically in the above-referenced docket. Please contact me directly with any questions.

Respectfully submitted,

/s/ Michele C. Farquhar

Michele C. Farquhar
Counsel to Encore Capital Group, Inc.

Partner
michele.farquhar@hoganlovells.com
D 1+ 202 637 5663

cc: Nicholas Degani
Angela Kronenberg

FIVE FACTS ABOUT PREDICTIVE DIALERS

1. PREDICTIVE DIALERS ARE NOT AUTODIALERS.

- Predictive dialers are modern electronic systems that help live representatives dial a pre-determined list of telephone numbers already contained in a company's database.
- Unlike autodialers, predictive dialers cannot generate, store, or dial random or sequential numbers.

2. PREDICTIVE DIALERS DO NOT ENABLE NEW UNWANTED CALLS OR IMPOSE ADDITIONAL COSTS ON CONSUMERS.

- They only facilitate calls to the same parties that can be reached through manual dialing.

3. PREDICTIVE DIALERS CONNECT LIVE REPRESENTATIVES WITH CONSUMERS AS QUICKLY AS POSSIBLE TO PROVIDE TIMELY, USEFUL INFORMATION.

- They can be used to initiate a variety of non-telemarketing calls like appointment reminders, fraudulent activity notices, payment confirmations, data security breach notifications, service interruption reports, calls about missed payments, school closing announcements, product recall notifications, parcel delivery notifications, and urgent employee communications.

4. PREDICTIVE DIALERS FACILITATE LEGAL COMPLIANCE.

- Predictive dialers help ensure better compliance with federal and state do-not-call lists.
- They can be programmed to restrict calls to: specific telephone numbers; specific individuals or account holders; certain area codes or regions; certain hours of the day; certain days of the week; a limited number of attempts per number or individual; a limited number of messages left per number; and a minimum amount of time between calls.
- They eliminate calls to wrong numbers due to human error.
- They protect data security through strict security permissions and robust auditing.

5. PREDICTIVE DIALERS MAXIMIZE LIVE REPRESENTATIVES' PRODUCTIVITY.

- Because predictive dialers filter out unproductive calls (*e.g.*, busy signals, unanswered calls, and answering machines), they increase productivity by drastically increasing the time that representatives spend on the telephone talking to consumers.
- This efficiency creates substantial cost-savings that can be passed on to consumers.